Delchamps, Inc. *and* International Brotherhood of Teamsters, Local No. 270 *and* Wilburn Ray Young Jr. *and* Ivy H. Tate *and* David Aranyosi. Cases 15–CA–13401, 15–CA–13564, 15–CA–13642, 15–CA–13673, and 15–CA–14085–1

April 21, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On May 5, 1998, Administrative Law Judge C. Richard Miserendino issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and Charging Party David Aranyosi each filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Delchamps, Inc., Hammond, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(b).

"(b) Make David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision."

Charles R. Rogers, Esq., for the General Counsel.
William E. Hester III, Esq. and *Barclay D. Beery, Esq*., of New Orleans, Louisiana, for the Respondent.
Julie Richards-Spencer, Esq., of Metairie, Louisiana, for Charging Party David Aranyosi, et al.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Member Hurtgen agrees that there was sufficient and related 8(a)(1) conduct to support the finding of antiunion animus that is necessary to establish an 8(a)(3) violation. However, he notes that the judge also relied on lawful conduct to support that finding. Member Hurtgen does not rely on this lawful conduct to establish the "animus" element of an 8(a)(3) violation.

[3] We shall modify the make-whole paragraph of the recommended Order to accord with standard remedial language.

DECISION

STATEMENT OF THE CASE

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried in New Orleans, Louisiana, on May 5–9 and June 10–11, 1997. Between the period of August 31, 1995, and August 8, 1996, the first four charges in the above-captioned case were filed and/or amended (several times) to allege that during the course of events leading up to a union election on September 22, 1995, the Respondent committed several violations of Section 8(a)(1) and (3) of the Act in opposing a union organizing campaign by the General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270 (Local 270 or the Union), which sought to represent the Respondent's warehouse employees in Hammond, Louisiana. The charges also alleged that after the Union was defeated in the election, the Respondent committed additional violations of Section 8(a)(1) and (3) of the Act by threatening, disciplining, and/or discharging certain employees because of their continued union support and/or protected concerted activity.

On or about September 19, 1996, the Regional Director approved a settlement agreement disposing of these charges. Less than 3 weeks after the settlement agreement was approved, the Respondent discharged 14 employees, many of whom were engaged in union and/or protected concerted activities. This prompted the filing of a fifth charge (Case 15–CA–14085) on October 8, 1996, which subsequently was amended twice, alleging that the Respondent unlawfully violated Section 8(a)(3) of the Act by discharging the 14 employees.

On November 6, 1996, the International Chemical Workers Union Council/United Food and Commercial Workers, AFL–CIO (UFCW) filed an election petition seeking to represent the same warehouse employees. By stipulated agreement, an election was held on December 20, 1996, at which time the UFCW received a majority of the valid ballots cast. However, 15 ballots were challenged by the Board's agent and 2 ballots were challenged by the petitioner, UFCW. The Respondent also filed objections to the election.

On January 30, 1997, the Regional Director issued an order consolidating cases and revoking settlement agreement, consolidated complaint and notice of hearing. An order directing a hearing on challenged ballots and objections and consolidated cases was issued on January 31, 1997. The Respondent filed a timely answer essentially denying the material allegations of the consolidated complaint.

On April 22, 1997, the petitioner, UFCW, filed a motion to sever representation case, withdraw petitioner's ballot challenges, et al., which the Respondent opposed. The motion was delegated to me for decision at the hearing. Upon consideration of the parties' briefs, and after hearing oral argument on the issues, I granted the motion for the reasons stated in the record, and remanded the matter to the Regional Director to determine the validity of the challenged ballots. The Respondent's request for special permission to appeal from my ruling granting the motion to sever the representation case, was denied by the Board on May 27, 1997.

The parties have been afforded a full opportunity to appear, present evidence, examine and cross-examine witnesses, and file posthearing briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed

by the General Counsel, Respondent, and counsel for Charging Party David Aranyosi, et al., I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Hammond, Louisiana, is engaged in the warehousing, transporting, and retail sale of food and other merchandise. It annually derives gross revenues in excess of $50,000, for transporting freight from within the State of Louisiana directly to points outside the State. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent further admits and I find that Local 270 and the UFCW are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Respondent operates approximately 118 retail food stores, and 10 liquor stores, located in Florida, Alabama, Mississippi, and Louisiana. Its distribution center (i.e., warehouse) is located in Hammond, Louisiana. Up until October 4, 1996, there was an ice plant within the warehouse, which produced 8-lb. bags of ice for shipment to the Respondent's stores. The ice plant was operated by three employees (one lead person and two stackers). Up until October 4, 1996, the Respondent also employed 11 maintenance mechanics in the warehouse, who were responsible for the service and repair of the refrigeration, electrical, and conveyor systems.

1. The unsuccessful attempts to organize the warehouse employees

In 1990, Teamsters Local No. 5, unsuccessfully attempted to organize the Respondent's warehouse employees. Ice plant stacker David Aranyosi was a key union activist. He solicited union authorization cards, encouraged warehouse employees to join the Union, and invited them to attend an organizing meeting, which he arranged, with Local 5 Business Agent Douglas Parr. Despite Aranyosi's hard efforts, Local 5 was unable to win a union election.

In spring 1995, a new management team took over the Respondent's overall operations. Kenneth Easton became director of the distribution center on or about May 1995, and a few weeks later, Richard La Trace became the Respondent's new president. Around the same time, Aranyosi contacted Rob Lewis, a business agent for Local 270, to discuss mounting an union organizing campaign at the warehouse. As a first step, Aranyosi formed a union organizing committee, along with coworkers David Tippett, Cynthia Sims, Samuel Lewis, and Edward Palmer. The Union then sent a certified letter to the Respondent identifying these employees as union organizers. The committee members commenced soliciting union authorization cards, and distributed union literature inside and outside the distribution center. They placed union leaflets in the employee breakrooms in the grocery and produce departments, and posted them on the employee bulletin boards. They handed out leaflets at the entrance to the warehouse driveway, where they could be observed by anyone entering or leaving the Respondent's premises, including supervisors and managers.

By June 1995, Local 270's organizing campaign was fully implemented. In the early part of the month, the Respondent placed yellow signs outside the entrance of its driveway, which read: "No handbilling or solicitation on Delchamps premises." Inside the warehouse, smaller signs eventually appeared in the breakrooms, which advised the employees that any materials left at the breakroom tables would be confiscated.

Wendall Watts was a supervisor, who oversaw operations in the ice plant. One day in June, he was observed taking union literature from the breakroom and removing it from an employee bulletin board. When Aranyosi heard that Watts had been seen taking union literature, he and fellow employee, William Ray Young Jr. (Junior Young), confronted Watts by the receiving office timeclock. Watts did not deny removing the union literature or taking it from the breakroom. According to Aranyosi and Young, he simply stated that it was his job to remove union leaflets because the Respondent's president, Richard La Trace (La Trace), had stated that if the Union got elected, the Respondent would move or close the warehouse down.

In late June, employee Kevin Coston became more active with the Union. He distributed union leaflets and began wearing a union pin on his hat. On July 7, he left work after completing his shift, but realized when he arrived home that he left his hat with a union pin in the employee changing room. Concerned that the hat and pin might be confiscated, Coston returned to the warehouse after hours to retrieve them. Instead of parking his vehicle in the employee parking lot, Coston parked in a restricted area next to the building and went inside. He returned a few minutes later, but as he began to drive off, Human Resources Manager David Battle stopped him. Battle wanted to know why Coston came back to work after hours and what he was doing in the building. After a brief discussion, Coston was allowed to leave.

Early the next morning, Supervisor Tony Martin called Coston into work for a meeting with two other supervisors, Danny Gilmore and Chuck Germany. Martin said that Easton had left him a message to fire Coston. After being questioned about why he was at the warehouse the night before, Coston was sent home, but was called back to the warehouse a few hours later for a meeting with Easton. After a brief exchange, Easton told Coston that employees were not permitted to return work during off-hours without permission, and that if he did so again, or if he parked in a restricted area again, he would be fired.

In mid-August 1995, La Trace met with shifts of employees at the warehouse for the purpose of explaining the Respondent's opposition to the Union. He told the employees that he opposed the Union and that the Respondent was capable of solving its problems without outside help. He talked about his prior experiences with a union organizing campaign in California, which resulted in a violent strike. He pointed out to the employees that he could find replacements for 300 warehouse employees in no time at all and he said that even if the Union won an election, the Respondent would not collectively bargain with it, that he would not back down.

David Aranyosi was accustomed to distributing union literature in nonworking areas of the warehouse during his breaks. In September 1995, Supervisor James Athens told Aranyosi that he only would be allowed to take his breaks in his designated breakroom in the grocery area or at the entrance to the building. When Aranyosi asked if he was being restricted to the grocery department because of his union activity, Athens said that he

did not know, but that he would check with Easton. Later that day, Easton asked Aranyosi if there was a problem with where he was told to take his breaks. Aranyosi said that he was a union organizer in the middle of an organizing campaign, and that regardless of what anyone said, he was going to continue visiting the produce side of the warehouse during his lunch and breaks. Easton cautioned Aranyosi about doing so, explaining that it would be insubordination, if he did. As Easton turned to leave the room, Aranyosi said that he had already contacted the NLRB about his right to do so. Easton relented by telling Aranyosi that he could go to the produce breakroom, but that he had to walk around the outside of the building; he could not walk through any work areas to get there.

2. The events subsequent to the 1995 union election

Local 270 lost the election on September 22, 1995. Two weeks later, on October 6, 1995, Supervisor Michael Lawley submitted a letter of resignation after being employed by the Respondent for more than 20 years. Sometime that morning, while taking a break with employee Junior Young (a union supporter), Lawley told him that it was his last day. Around 1 p.m. that afternoon, Lawley beckoned Young to come outside the building. There, Lawley told Young that all the union organizers should watch their backs, because he heard Easton say in a meeting that within 1 year he was going to get rid of them all.

In November 1995, Aranyosi was called to Easton's office, where Easton and Battle were waiting. After complimenting Aranyosi for the leadership ability he showed during the union organizing campaign, Easton said that he wanted Aranyosi to consider taking a supervisory position that would become available in the near future. Although Aranyosi really was not interested in a supervisory position, he told Easton he would think about it. Suspecting some ulterior motive, he asked if Easton was setting him up to get rid of him because of his union activity. Both Easton and Battle denied that the supervisory position was a ploy. Easton said that he wanted Aranyosi to join his management team. As the meeting progressed, Aranyosi pointed out that the employees had lost respect for Easton because he did not communicate with them. He suggested that Easton remedy this by holding more meetings with the employees. Aranyosi also added that he already had contacted the UFCW about starting another organizing campaign. Easton discouraged the idea, telling Aranyosi that they did not need a union at the warehouse and that Respondent would not stand still for it.

Aranyosi saw Easton's overture as an opportunity to possibly settle a number of pending unfair labor practice charges in exchange for giving each Charging Party the job of his/her choice. After discussing the idea with Junior Young, Aranyosi polled everyone who had a pending unfair labor practice charge to find out what they wanted in exchange for settling the charges. He pointed out to them that this was an all or nothing deal, that is, unless everyone could be satisfied, none of the unfair labor practices would be settled.

The next step was to meet with Easton to try and work out a compromise. Junior Young set up a meeting with Easton at which Aranyosi explained that the employees would withdraw the unfair labor practice charges, if they were given the positions that they wanted. Easton did not reject the idea, but a total package could not be worked out. The only person to be offered exactly what he wanted was Aranyosi, who declined to take the job because someone with greater seniority wanted it.

In the meantime, Aranyosi phoned the Respondent's president, Richard La Trace, who was located in Mobile, Alabama. He asked him if he knew that Easton had offered him a supervisory position. La Trace disclaimed any knowledge of such an offer. Aranyosi explained to La Trace that Easton did not communicate with the employees and that if he was removed as warehouse director, the unfair labor practices would be dismissed and the employees would work with the Respondent. On the other hand, as long as Easton was running the warehouse, Aranyosi was going to organize the work force. La Trace told Aranyosi that he did not want a union running the warehouse, and that he would like to meet with Aranyosi at the warehouse the following week.

Instead of La Trace, Battle was sent by his superior, Thomas Trebesh, senior vice president human resources, who reported to La Trace, to meet with Aranyosi. In an effort to gain his confidence, Battle assured Aranyosi that anything he said would be confidential, and kept from Easton, because he (Battle) reported to Trebesh. Aranyosi told Battle that the employees did not like how Easton was running the warehouse. He reiterated that if the Respondent did not get someone to manage the warehouse who would communicate with the employees, they were going to have the UFCW organize the warehouse. Battle's response was no different from La Trace's. He said that the warehouse did not need a union.

In late November 1995, rumors were circulating that the Company was being bought out. Aranyosi gathered a group of employees during the 9 a.m. break to talk about working conditions and the rumors. Outside of the breakroom where the employees had gathered, Junior Walker phoned Supervisor Watts asking him to come to the meeting. When he arrived, the employees began questioning Watts about several issues. They wanted to know if the Company was being sold and why. They did not understand why Easton would not discuss their concerns. They complained about the recently initiated combo runs which shipped meat, produce, and freezer items on one truck. They also complained about having to tag trucks, a task that was recently added to some of the leadmen's duties. Watts had little to say, other than he needed to talk with Easton and get back to them.

At the 11 a.m. break, the group assembled again, demanding to speak to Easton. Watts told them to go back to work because Easton did not want to talk with them. A few employees remained in the breakroom until their break was over, but everyone else returned to work.

At 1 p.m., Aranyosi and Junior Young went to see Battle. They basically put the same questions to him that had been asked of Watts. They wanted to know if there was any truth to the story that the Company might be sold and expressed their displeasure with the combo runs. Aranyosi said that the employees did not understand why Easton would not meet with him. He told Battle that as long as Easton maintained that that kind of attitude, the employees were going to organize with the UFCW. When Aranyosi asked Battle if he would meet with the employees, he said he would consider doing so, if everyone remained calm during the meeting.

The next day, around 11 a.m., Battle met with about 16 employees in the produce breakroom. After listening to various employees' concerns, he pointed out that many of the decisions which evoked their displeasure had been made at corporate headquarters in Mobile, Alabama. As the session intensified, someone used profanity prompting Battle to end the meeting.

A day or two later, Supervisor Watts spent about 30 minutes in the ice plant watching Aranyosi and the two other employees (Mike Ledford and Ed Moore). When the employees shut down the equipment to take their 9 a.m. break, Watts told them that they should be bending their knees when they lift the ice bags off the conveyor belt. Aranyosi asked how a person lifting a bag off a waist high conveyor belt was supposed to bend his knees. He even asked Watts to demonstrate, which Watts declined to do. Watts also wanted to know whose books were laying on a small table in the ice plant, but know one claimed ownership. He reminded them that personal items should be kept in their lockers. Finally, he told Aranyosi to make sure he used the signal horn on the forklift when he backed out of the freezer door into the corridor.

Two hours later, Ledford was called to Watt's office, where he received a verbal warning and a report of conference[1] from Watts for not bending his knees and leaving personal items in a work area. Returning to the ice plant, he told Aranyosi that Watts wanted to see him and added, "[Y]ou're going to get written up." Watts and Supervisor Danny Howell were waiting for Aranyosi when he arrived. They gave him a verbal warning for not bending his knees, not blowing his horn, and leaving personal items in a work area.[2] Watts asked Aranyosi to sign the report of conference, which initially he refused to do. Instead, he told Watts that he thought he was getting a warning because of his union activity. Watts denied that union activity had anything to do with the warning. He also said told Aranyosi it was company policy to send home an employee who refused to sign a report of conference. Aranyosi signed his name "under protest." Shortly thereafter, he filed an unfair labor practice charge, a copy of which he mailed to Easton.

About a week later, sanitation employee Ivy Tate was given a written warning for excessive absenteeism by his supervisor, Danny Howell. When he refused to sign the written warning, he was sent home, and eventually was discharged, after a meeting with Easton.

In late December 1995, Aranyosi was called to Easton's office again. In the presence of Battle, Easton offered Aranyosi a position in the reclaim operations center, located in La Place, Louisiana, some 40 miles from Hammond. Aranyosi said that he would like to talk to his wife about the position. A few days after Christmas, Aranyosi declined the offer. He told Easton that because of his prior union activity he was afraid that Easton might be trying to get rid of him. Easton assured him that was not the case, and stated that other positions would become available, probably in inventory control.

In January 1996, Easton went to the ice plant to talk with Ledford. After greeting Aranyosi, Ledford, and Clayton, Easton told Ledford that there was money in the budget for the ice plant, and that he wanted Ledford to prepare a list of needed items. He also told Ledford that he was considering expanding the ice plant to make it more profitable.

About a month later, Easton called Aranyosi, Ledford, and Clayton to his office to review an equipment catalog. They selected some mats and a small plastic dump truck for the ice plant. Easton stated that he was thinking about adding another shift to increase ice production. Ledford used this opportunity to ask for freezer pay, which was a 15-cent differential paid to employees who worked in the freezer, because of the cold conditions in which they worked. Easton said he did not see any reason why they should not receive freezer pay and promised to look into the matter. A week later, Supervisor Watts told the ice plant employees that their request for freezer pay had been granted.

Around the same time, February 1996, Ledford received a phone call from Supervisor Calvin Sealy, a close friend. He said that it would be in Ledford's best interest to find another job in the warehouse because Easton was heard saying that he was going to get rid of David Aranyosi, one way or another, regardless of who he had to "take out" with him.[3]

In May 1996, forklift operator Tim Hill asked Aranyosi for assistance in addressing employee concerns that the forklift drivers had with management. As explained by Hill, the drivers were being required to stack more pallets and their work was being closely monitored by an new inventory control person named Joanne Alack. Aranyosi and Ledford told Hill that the forklift drivers should have a meeting with their supervisor. The ice plant employees agreed to attend the meeting to show their support for the forklift drivers. Encouraged by the ice plant employees, Hill asked the forklift supervisor, Kurt Douglas, to attend a meeting, but Supervisor Watts attended instead. He told everyone present that the meeting involved forklift drivers only. When Aranyosi nevertheless attempted to attend the meeting, he was sent back to work.

One weekend in June 1996, welding repairs were made to the refrigeration units. Several employees, including Aranyosi, complained about feeling ill. Aranyosi heard that fellow employee Oscar Eden had died over the weekend, and assumed that his death was related to the welding fumes. Ledford encouraged Aranyosi to report the incident to the Occupational Safety & Health Administration (OSHA). David Trippett, a refrigeration maintenance mechanic, agreed. He had previously told Easton in a safety meeting that the Respondent's evacuation procedure for ammonia fumes was inadequate. After the three employees put together a list of items to report to OSHA,[4] Aranyosi called OSHA stating that there had been a death in the warehouse because of welding fumes. He also filed an OSHA complaint, prompting an investigation which resulted in the Respondent being cited for a variety of OSHA violations, including not maintaining respirators to OSHA standards, failure to maintain safety nets under the conveyor system, and failure to follow an evacuation procedure when the ammonia alarms sound.

Around the same time, Easton called a meeting of the perishable department employees (ice plant, produce, and freezer employees) to explain an incentive plan. If the employees in a particular section finished their work early (up to 2 hours early), they would be allowed to go home early. Even before the incentive plan was implemented, the three ice plant employees routinely kept the ice plant running through their breaks, which enabled them to finish early. However, during peak production periods in the summer, Lester Reed, a hauler,

[1] A conference report is a document, signed by an employee, which acknowledges the fact that he has been verbally counseled about a particular infraction.

[2] Edward Moore, the other employee working in the ice plant at that time, also received a warning for not bending his knees.

[3] Sealy was called by the Respondent to testify, but did not rebut Ledford's account of their phone conversation or deny that such a conversation took place.

[4] In the meantime, Aranoysi and Young made a flyer entitled "I Came Here To Work—Not To Die," which they handed it out to employees, placed on the forklifts, and posted on the employee bulletin board.

was sent to work in the ice plant, so that two employees could go on break without shutting down the ice maker. When the incentive plan went into effect, however, Reed was no longer allowed to relieve the ice plant employees during their breaks.

In July through August 1996, the ice plant employees met with Watts to discuss the continued need for Reed's help during breaks. When Watts insisted that Reed was needed on the docks, Ledford tried to explain that without Reed's help, the ice plant employees were being unfairly excluded from participating in the incentive plan. His efforts had limited success, however, because Reed was allowed to help during breaks on only a few other occasions.

In August, Easton met with the perishable department employees to announce a pay increase. There would be an hourly wage increase of 25 cents for leadpersons and forklift operators, 15 cents for stackers (including Aranyosi and Clayton in the ice plant), and 15 cents for sanitation workers. There would be no pay increase for maintenance department employees. Easton said that the increases were based on a survey conducted of warehouses in the geographic area, which revealed that the Respondent's warehouse employees were among the highest paid in the area. Junior Young questioned the accuracy of the survey, and opined that if there was a union, the Respondent would have to open its books to support what was said. Easton disputed the remark.

The maintenance department employees were extremely upset about not receiving any pay increase at all. Tippett and coworker, Joey LaMonte asked their supervisor, Myron Hall, to arrange a meeting with Easton, which he agreed to do. Two days later, Easton, Hall, and Supervisor Kurt Douglas met with the maintenance department employees. The employees questioned the basis for denying them a pay increase. Tippett specifically asked Easton to identify the wage data relied upon by the Respondent, but Easton said he would have to check with headquarters in Mobile because he did not have that information. In Easton's presence, LaMonte commented that if the Union tried to organize again, he knew what he was going to do. After the meeting, a few other maintenance employees echoed LaMonte's remark during their break. As LaMonte, Tippett, and Supervisor Hall stood smoking on the ramp into the maintenance department, coworkers Dick Strahan and John Long lamented that they tried to convince the warehouse employees to vote for the Union in September 1995. LaMonte and John Tate stated that if there was another organizing campaign, they would support a union. Supervisor Hall quietly put out his cigarette and left.

The ice plant employees were also dissatisfied. They wanted a 25-cent increase because they used a forklift to double stack ice in the freezer during the peak production months. When they discussed their demand with Supervisor Watts, he disputed the basis for the request by pointing out that they did not use a forklift continuously. Failing to gain his support, they took up the matter with Battle, who also disagreed with their rationale for seeking a higher wage increase. He told them that stacking the ice pallets in the freezer was part of their job. Aranyosi and Clayton told Battle that if they were not paid the higher increase they would no longer work as leadpersons on weekends or perform any maintenance work on the ice machine, if a problem developed. Battle said that he would speak with Easton, but before doing so he obtained their assurance that their complaints evolved around the pay raises and nothing else.

A few days later, Easton, Battle, Watts, and Douglas, met with Aranyosi, Ledford, and Clayton to discuss their pay increase. When Easton attempted to explain the basis for their wage increase, Aranyosi added that, in addition to using a forklift, he and Clayton did a lot of extra work too. Ledford joined the discussion arguing in favor of a higher wage increase for Aranyosi and Clayton because of their extra efforts in performing routine maintenance on the ice machine. Easton was unpersuaded.

Two days later, several employees, including the ice plant employees, were in the breakroom commiserating over the inadequacies of their wage increases. Ledford told Aranyosi that it was time to organize a union. He demanded that Aranyosi take the authorization cards that he had been collecting, and file an election petition. Aranyosi wanted to wait. He thought that the Board's Regional Office needed more time to try to settle the pending unfair labor practices. Ledford was adamant. He wanted to file a petition right away. As he spoke, Junior Young motioned to the group to be quiet. In the reflection of the glass door leading to the breakroom, he saw Vince Showers, a supervisor, standing outside the room. Everyone in the breakroom stopped talking as Showers entered. After Showers purchased something from a vending machine, he made small talk with Lester Reed, and the group dispersed.

In mid-September 1996, Watts held a monthly crew meeting for the perishable department (produce, freezer, and ice plant). He told everyone that there would be a new rule requiring employees to change into their workclothes, and then clock in. The ice plant employees had always been allowed to clock in, go to their locker room, and change into jumpsuits before starting work. Aranyosi asked for a meeting with Battle to discuss the change. Instead of meeting with Battle, however, Aranyosi, Ledford, and Clayton were called to Easton's office, where Easton, Watts, and Douglas were waiting. Easton began by telling the three ice plant employees that from then on, he wanted them to discuss their concerns with him, instead of calling Battle. He said that Mobile (i.e., Respondent's corporate offices) did not need to know everything that was going on in the warehouse. He was capable of handling any problems. Ledford spoke up saying that it was unfair to change the dress practice, since they had been clocking in first and then changing for years. Easton agreed, telling them they could continue the original practice of clocking in first, then dressing.

But Ledford continued to vent. He told Easton that there were other problems with the produce department that Easton probably was not even aware of. Specifically, Ledford said that leadpersons in produce were getting cash from the lumpers (individuals that unload trucks, who are not employed by the Respondent). He also said that some of the leadpersons were lumping themselves for extra cash, while they were on company time. When Ledford accused the produce inspectors of other illegal improprieties, Easton quickly admonished him about spreading false rumors and told him that they would talk about it another time. Ledford testified that at that point he felt that maybe he had said too much.

In late September to early October, Associate Relations Manager Renee Dexter, from the Respondent's corporate headquarters in Mobile, toured the warehouse. Ledford invited her to walk through the ice plant, where he introduced her to Aranyosi, who was stacking ice, and David Tippett, who was working on the refrigeration system. They proceeded to tell Dexter all that they perceived to be wrong with the warehouse.

A few days later, on October 4, Aranyosi, Young, and Clayton were called to Easton's office. Easton told them that the Respondent was closing down the ice plant because it could buy ice cheaper than it could be made. He explained that their jobs were being eliminated and that they were being terminated. All three were surprised, particularly in light of Easton's prior comments about adding another ice machine to expand the ice plant. Aranyosi stated out loud that the Respondent had eliminated the whole ice plant, just to get rid of him. Even though Easton told him that it was a business decision which was made in Mobile, Aranyosi accused Easton of being vindictive, warning him "what goes around, comes around." Clayton was equally perturbed about not receiving any advanced warning. Ledford expressed disbelief that the Respondent would terminate someone like himself, who had been cross-trained to perform many jobs in the warehouse.

Accompanied by Supervisors Pittman and Showers, they were escorted to Battle's office to pick up their final paychecks. Aranyosi asked Battle to give Clayton and Ledford other jobs in the warehouse, but he declined, stating that this was a business decision. From there, the three ice plant employees were escorted to the ice plant to pick up their personal belongings and then out the door. The reason given for their discharges was job elimination.

On or about the same day, October 4, a similar scenario was played out with 11 maintenance department employees, who were called to Easton's office. They were told that "due to economic reasons" and because the Respondent was "looking for a little more expertise" in the refrigeration, electrical, and conveyor maintenance areas, they were being terminated. Their jobs were being contracted out. They were taken to Battle's office to pick up their final paychecks, allowed to collect their personal belongings, and escorted out of the warehouse. The stated reason for their termination was job elimination.

One month later, on November 6, 1996, the UFCW filed an election petition seeking to represent the Union. A few days before the election, which was held on December 20, Renee Dexter toured the warehouse again, accompanied by Battle, asking employees what they thought about the Company, and telling them that having a union could be make it costly too for the Respondent to operate the warehouse.

B. Analysis and Findings

1. The 8(a)(3) violations

a. Analytical framework

In a typical section 8(a)(3) discrimination case, the General Counsel's evidence must support a reasonable inference that protected concerted activity was a motivating factor in the Employer's decision.[5] *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Specifically, the General Counsel must establish union activity, knowledge, animus or hostility, and adverse action which tends to encourage or discourage union activity. *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991). Since employer motivation is a factual question, which rarely will be proved by direct evidence, unlawful motivation may be inferred from the total circumstances proved. *Fluor Daniel, Inc.,* 304 NLRB 970 (1991). Once the General Counsel has satisfied this evidentiary burden, the Employer must persuasively establish by a preponderance of the evidence that it would have made the same decision, even in the absence of union activity. *T & J Trucking Co.,* 316 NLRB 771 (1995).

Relying on *Delchamps, Inc. v. NLRB,* 585 F.2d 91, 94 (5th Cir. 1978), and its progeny, the Respondent argues that the General Counsel has not met his evidentiary burden because the evidence does not show that the managerial officials responsible for making the decisions to outsource the ice plant and maintenance functions (and to discharge the 14 employees) had knowledge of their individual involvement in union and/or protected concerted activity. But a showing that the Employer had knowledge of union activities of each discharged employee is not necessary, where, as here, an employer lays off or eliminates a portion of the work force for the purpose of discouraging union support or to retaliate against its employees because of the Union activities of some employees. See *Ballou Brick Co. v. NLRB,* 798 F.2d 339, 342 (8th Cir. 1986); *Birch Run Welding & Fabricating, Inc. v. NLRB,* 761 F.2d 1175, 1179–1180 (6th Cir. 1985); *Dillingham Marine & Mfg. Co. v. NLRB,* 610 F.2d 319, 321 (5th Cir. 1980); *M.S.P. Industries v. NLRB,* 568 F.2d 166, 176 (10th Cir. 1977). "Common sense dictates that when employees are discharged for individual reasons, then the Employer's knowledge for each employee's union activity and the Employer's motivation for each discharge are the relevant inquires; but when the Employer makes a single decision to fire 15 people to [discourage union support], then the relevant inquiry is the Employer's motivation for that single decision." *Dillingham Marine,* supra, 610 F.2d at 321.

The evidence in this case shows that shortly before October 4, 1996, La Trace, made the decision to "outsource" the ice plant, thereby discharging the ice plant employees, Aranyosi, Ledford, and Clayton. Simultaneously, Easton, in collaboration with La Trace, made the decision to outsource the refrigeration, electrical, and conveyor maintenance service functions, thereby discharging maintenance mechanics, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald. The evidence also shows that at least half the employees discharged were active union supporters, some of whom were known to the decision makers for their union activity, and that the decision makers opposed the unionization of the warehouse. The evidence also shows that the decision to outsource certain functions came at a time when the employees performing those functions had recently complained to OSHA about safety violations and/or were particularly dissatisfied with their pay increases or lack thereof. Finally, the evidence shows that the decisions were made very shortly after the unfair labor practice settlement agreement was approved, the election bar had expired, and just before another union organizing campaign was about to begin. The evidence taken as a whole, therefore, supports a reasonable inference that the decisions to outsource the ice plant department and maintenance mechanic functions were motivated by a desire to discourage support for the Union and to retaliate against those who actively supported the Union.

(1) The ice plant employees

Even applying the typical *Wright Line* analysis, the evidence establishes that La Trace, who purportedly made the decision to close the ice plant, knew firsthand from Aranyosi that he was an active union supporter, who intended to organize a union at the warehouse. According to Aranyosi, he told La Trace in a phone conversation in November 1995, that as long as Easton

[5] *Manno Electric,* 321 NLRB 278, 280 fn. 12 (1996).

was in charge of the warehouse, Aranyosi would continue trying to unionize the warehouse. The evidence also supports a reasonable inference that La Trace had indirect knowledge of Aranyosi's intentions and union activity from David Battle. It was Battle, who was sent by Trebesh to meet with Aranyosi in place of La Trace. It was Battle, who told Aranyosi that anything they discussed would bypass Easton because Battle reported directly to Trebesh. This evidence shows that there was a line of communication extending from Battle through Trebesh to La Trace, and vice versa, and that Battle effectively was the corporate "eyes, ears, [to a certain extent voice]" at the warehouse.

In an incredulous attempt to downplay his familiarity with Aranyosi and his union activity, La Trace nonchalantly testified on direct examination that he had heard Aranyosi's name mentioned a couple of times and that he was aware that a person named Aranyosi was involved in the Union's attempt to organize the warehouse. On cross-examination, however, his detailed knowledge of Aranyosi (and his union activity) became evident. La Trace acknowledged that he had heard that Aranyosi had been an election observer for the Union in the 1995 union election and that he knew Aranyosi was on the union organizing committee. He conceded that he had heard Aranyosi's name mentioned in connection with the pending unfair labor practices, but said he did not attach any significance to it because he had heard a lot of names in that timeframe. La Trace also testified that he had been told that Aranyosi was offered a position in the reclamation center.[6] As cross-examination continued, La Trace reluctantly admitted that he had met Aranyosi twice at the warehouse and also that he spoke with Aranyosi on the phone one time—but could not recall what was said.

Thus, contrary to the impression that he initially sought to foster, the evidence establishes that La Trace was very much aware of Aranyosi and his union activities. The evidence also supports a reasonable inference that he was kept apprised of Aranyosi's union activities by Battle, who Aranyosi sought out with increasing frequency over time, whenever he became dissatisfied with a managerial decision made by Easton. In fact by September 1996, Aranyosi had sought out Battle with such regularity that Easton told him and the other ice plant employees that he did not want them going to Battle anymore because he did not want Mobile knowing everything that went on in the warehouse.

The evidence also supports a reasonable inference that La Trace knew about the union activities of Aranyosi through discussions with Easton, who reported directly to him. Easton testified that he and La Trace discussed the ice plant by phone, and La Trace confirmed the same. There is no question that Easton was well aware that Aranyosi supported the Union. Shortly before the September 1995 union election, Aranosyi defied an order by Easton to refrain from distributing union leaflets in other than two designated areas. After telling Easton that he was a union organizer in the middle of a union campaign, he pointed out to Easton that he already had contacted the NLRB Regional Office to find out if he had the right to do so. Aranyosi also drew attention to his union affiliation in November 1995, when he declined to join Easton's "management team" and when he filed a unfair labor practice charge in December, after receiving a verbal warning. Even more prominent was the role Aranyosi played in January 1996, when he attempted to settle all the pending unfair labor practice charges in exchange for transferring the alleged discriminatees to jobs of their choice. The evidence therefore supports a reasonable inference that at least some of Aranyosi's union activity, known to Easton, was passed along to his supervisor, La Trace, in the course of their conversations about the ice plant.

The evidence also reflects that it was more likely, than not, that La Trace knew, through Easton and Battle, that the other ice plant employees, Ledford and Clayton, stood behind Aranyosi and the Union. The evidence establishes that the ice plant employees looked after one and other, as well as the other workers in the warehouse. Ledford, who at one time aspired to become a supervisor, was a visible and vocal spokesperson for Aranyosi and Clayton on issues concerning their working conditions and pay. In January 1996, he sought and obtained a 15-cent freezer pay differential for Aranyosi and Clayton because they worked inside the freezer. A few months later, Ledford argued to Watts that without Reed's help, the ice plant employees were being unfairly excluded from the "leave early" incentive program which was recently implemented. In August 1996, Ledford openly supported a demand made by Aranyosi and Clayton for forklift pay, and argued to Easton that they deserved the higher wage because of their extra efforts in performing routine maintenance on the ice machine. In September 1996, Ledford vented his frustrations with management by telling Easton about some allegedly questionable practices taking place on the receiving dock, which quickly invoked Easton's ire. The evidence therefore supports a reasonable inference that by his comments and conduct in open support of his fellow ice plant workers, Ledford made it known to Easton that he supported his coworkers, and if another union organizing began, he would support the union effort.

Even though Gregory Clayton was less visible and less vocal than Aranyosi or Ledford, the evidence shows that Clayton supported Aranyosi and the Union. Accordingly to Aranyosi's unrebutted testimony, in attempting to settle the pending unfair labor practice charges, he sought a better job for Clayton, who did not have a unfair labor practice charge pending, because Clayton steadfastly supported him and the Union. A reasonable inference therefore can be made that Easton was aware of Clayton's union support because his name was discussed, along with the alleged discriminatees, in the context of trying to settle their unfair labor practice charges and because of the fact that he worked closely with Aranyosi and Ledford.

Finally, the evidence shows that Aranyosi, Ledford, and Clayton were not only supportive of the Union and each other, they supported the other warehouse employees, who engaged in protected concerted activities. In November 1995, Aranyosi gathered the warehouse employees during their breaks to talk about working conditions and the rumor circulating that the Company was being sold. Subsequently, the forklift drivers turned to the ice plant employees for advice and support, who told them to demand a meeting with their supervisor, and then tried to attend the forklift driver meeting, even though they had no stake in the dispute. In July 1996, Aranyosi and Ledford conferred with refrigeration maintenance mechanic David Tip-

[6] This admission, standing alone, calls into question La Trace's veracity because it supports a reasonable inference that as early as December 1995, La Trace was being kept apprised of Aranoysi's union activities. Otherwise, why would the president of a large company be kept apprised, or even care, that a ice bag stacker in a warehouse 150 miles away from corporate headquarters might be transferred to a more remote location—unless the ice bag stacker was the most visible and vocal union activist at the warehouse.

pett about contacting OSHA, passed out leaflets addressing health and safety concerns, and notified OSHA, which led to an investigation followed by citations for various OSHA violations.

What the evidence shows therefore is that La Trace knew directly, and/or indirectly through Battle and Easton, that Aranyosi was a strong union supporter, and that a reasonable inference exists that he knew indirectly through Easton and Battle that the other ice plant employees, Ledford and Clayton, supported Aranyosi and the Union. The evidence also support a reasonable inference that La Trace knew indirectly that together the three ice plant employees were advocates for the protected concerted activities of the other warehouse employees.

(2) The refrigeration, electrical, and conveyor maintenance employees

According to the evidence, Easton, with the approval of La Trace, made the decision to outsource the refrigeration, electrical, and conveyor maintenance functions, resulting in the discharge of 11 maintenance mechanics. The Respondent argues that aside from Tippett, most of these individuals were only minimally involved in union activities, which consisted of wearing union buttons. A few, like LaMonte, Tate, and Fitzgerald made prounion comments in the presence of their supervisor, Myron Hall, but Easton testified that at no time in 1996 did Hall ever mention to him that he had heard or overheard the maintenance employees making prounion comments. The Respondent therefore argues that no basis exists for imputing Hall's knowledge of union support to the decision maker, Easton.

But as pointed out above, a showing of knowledge of each individual's union or protected activity is not required because the theory of *Dillingham Marine,* supra, focuses upon the Employer's motive in ordering mass discharges, rather than the prounion or antiunion status of particular employees. Id. at 321; accord: *Birch Run Welding & Fabricating, Inc.,* supra, 761 F.2d at 1180. The rationale is that a general action by an employer to discourage union activity or retaliate against the work force because of the union support of some, impedes the exercise of Section 7 rights just as effectively as adverse action taken against known union supporters. The theory is viable even though neutral or antiunion employees are also discharged in the process. *Merchants Truck Line, Inc.,* supra, 577 F.2d at 1016.

Several factors support a reasonable inference that the elimination of the maintenance functions was motivated by a desire to discourage support for the Union. The first of which is the Respondent's awareness of increasing dissatisfaction among the maintenance employees with the way they were treated with respect to pay. The evidence shows that refrigeration maintenance mechanic David Tippett told Easton in early August 1996,[7] that the maintenance employees were dissatisfied with pay and working conditions. Other maintenance employees expressed similar dissatisfaction during a meeting with Easton in late August to September 1996. Among those, the maintenance employees complained that it was unfair to deny them any pay increase at all and pointed out that some employees were bringing home $40–50 a week less than what they were earning 5 years earlier.

In addition, the evidence shows that Easton was aware that a another organizing drive was likely and that there was support among the maintenance mechanics for the Union. When Tippett was called to Easton's office in August 1996, in connection with the "suck butt bib" incident, he relayed to Easton that the maintenance mechanic felt mistreated and intimated that another union organizing campaign was likely. Tippett told Easton that unions were making a comeback because of the way employers were unfairly treating their employees. In the pay raise meeting, LaMonte stated within earshot of Easton, that if the Union came back to organize, he knows what he would do. Easton also knew from the September 1995 union campaign that some of the maintenance mechanics who attended the meeting had supported the Union in the past. John Tate had distributed union pins and literature, and in a one-to-one meeting told Easton that he was in favor of having a union. Cody Fitzgerald had a heated argument about the Union in 1995 with coworker Mark Stevens, in the presence of Supervisor Hall.

The evidence supports a reasonable inference that Easton knew from the union election only 11 months before, and from the recent comments of the maintenance employees,[8] that another union organizing campaign was very likely, and that several maintenance employees supported the Union. These factors, coupled with the evidence showing that Easton and La Trace opposed the Union, as well as the evidence showing that the statutory election bar[9] would soon expire, support a reasonable inference that the Respondent's decided to eliminate certain maintenance functions in order to discourage support for the Union.

(3) Animus

Further proof that the decisions to eliminate certain functions in the warehouse (and discharge 14 employees) was motivated by a desire to discourage union support is the uncontradicted evidence showing that the Respondent opposed having a union at the warehouse. In the summer 1995, La Trace met on 2 days with warehouse employees to dissuade them from voting for the Union. The uncontradicted testimony of employees, Cynthia Sims, Samuel Lewis, Harvey Dickerson, and Kelly Kennedy, discloses that on one of those days La Trace unequivocally stated that (1) the Company did not want or need a union in the warehouse, (2) the Respondent could solve any problems that existed without outside help, and (3) if the Union were elected, the Respondent did not have to, and would not, bargain with it. Sims recalled that La Trace said, "[H]e would have the last word." Dickerson and Kennedy testified that La Trace stated that individual wages and benefits would go down to zero and that is where negotiations would begin. La Trace did not deny making these statements. And on cross-examination, he admitted that he gave two speeches in which he told the employees that he opposed the Union and that unionization was

[7] In late July 1996, Tippett was given an employee of the month award, which he made into a little bib, he called the "suck butt bib." Tippett rode around the warehouse on a motorized cart wearing the bib. As a result, he was called to Easton's office and reprimanded for his conduct.

[8] In addition to the comments by the maintenance mechanics, the evidence shows that Aranoysi had openly and repeatedly vowed to continue his efforts to unionize the warehouse, so long as Easton was the warehouse director. In response, La Trace and his subordinate managers had articulated their opposition to a union and Easton vowed to discharge Aranoysi and anyone else who stood in his way by September 1996.

[9] Sec. 9(c)(3) of the Act.

not necessary at the warehouse. The evidence therefore establishes that La Trace took a very hard line in opposing the Union, and that he went as far as to imply to the employees that it would be futile for them to elect a union.

Employee Lewis also recalled La Trace saying that the warehouse employees were a drop in the bucket, who he could replace and that they would not get their jobs back. Employee Sims likewise remembered La Trace saying that the warehouse employees were no more than a drop in the bucket, who could be easily replaced. She testified that La Trace said that "if we was to walk out, that he could replace us in two weeks with 600 employees." Employee Dickerson testified that La Trace said that in the event of a strike the employees would be fired and replaced.

The Respondent did not ask La Trace any questions about the comments he made at the employee meeting. Rather, in an effort to rebut the employees' testimony, the Respondent asked Easton and Battle to describe what they heard La Trace say to the employees. Easton responded, "I think he [La Trace] said that if the Union got in and there was a strike we'd have to replace those people while they were out on strike. We were going to run the facility."(Tr. 1224–1225.) Easton denied that La Trace said that the employees who went out on strike would be fired or that a strike could cost them their jobs. Instead, he expounded that in the course of relating his prior experiences with unions, La Trace spoke of a strike out west, where some employees were fired for violence. Battle's testimony really did not add anything. He recalled La Trace saying that he had to operate the business and hopefully there would be no strikes.

I find that the collective testimonies of the other employee witnesses do not support Dickerson's recollection that La Trace said that the employees would be fired in the event of a strike. However, I also find that the cumulative evidence establishes that La Trace gave the employees the impression that they were expendable, and if there was a strike, they could be easily replaced. No one asserts, and the evidence does not show, that La Trace explained to the employees that they could or would be recalled after a strike. In the context of telling the employees that the Respondent did not have to bargain with the Union, even if it was elected, and in light of the uncontradicted testimony that La Trace said that the 300 warehouse employees were nothing more than a drop in the bucket, the evidence supports a reasonable inference that the impression he sought, and did, foster was that the employees would not be brought back to work. I therefore find that La Trace's comments are further evidence of antiunion animus.

Evidence of animus is also established by La Trace's continued opposition to the Union after the Local 270 was defeated in September 1995. In his unrebutted testimony, Aranyosi said that La Trace told him in their telephone conversation in late November 1995, that he did not want a union in the warehouse. Easton and Battle also told Aranyosi subsequently that they did not need a union in the warehouse.

Several comments attributed to certain supervisors also reflect a strong aversion to Aranyosi's union activity, as well as opposition to the Union. According to the uncontradicted testimony of Leadman Michael Ledford, he received a phone call from Supervisor Calvin Sealy in January–February 1996, telling him that it was in his best interest to find another job in the warehouse because Easton said that he was going to get rid of David Aranyosi, one way or another, regardless of who he had to take out with him. Although Sealy was called to testify by the Respondent about escorting employee Harvey Dickerson to a meeting with Easton, he did not deny that he phoned Ledford or any part of his testimony. The evidence supports a reasonable inference that Easton was determined to discharge Aranyosi because of his union activity, even if it meant firing the other ice plant employees.

In a similar vein, employee Junior Young testified that in October 1995, Dock Supervisor Michael Lawley beckoned him to come outside the building at which time he told Young that all union organizers should watch their backs, because he had heard Easton say in a meeting that within 1 year he was going to get rid of them all. Respondent's counsel objected to the admission of this testimony on the grounds of hearsay. He argued that the statement purportedly was made by Lawley on his last day of employment with Respondent, after he was told he could go home early that day. The Respondent asserts that the statement therefore was outside the scope of Fed.R.Evid. 801(d)(2) because it was not made by a "party agent" during the existence of the employment relationship.

The evidence shows that Lawley, who had been employed by the Respondent for 20 years, submitted a letter on October 6, 1995, resigning effective that day because of a pending shift change. According to Easton, Lawley presented the letter to him sometime between 7:30–9 a.m. on October 6, in the presence of Perishable Manager Bobby Trest. About 1 hour after Lawley left his office, Easton told Trest to let Lawley go home for the day. But when Easton was asked if he was aware whether Lawley had remained at the facility the rest of the day, he never answered the question. Rather, he responded in the following manner: "Some time after he left my office, I'm going to say an hour about, I told Bobby to go and let him go for the day. He wasn't going to be productive on his last day so go ahead and let him go home." (Tr. 1227.) But there is no evidence that Trest ever carried out that directive and there is no evidence that Lawley did not finish out the day. Instead, Young's uncontradicted testimony establishes that Lawley normally worked a 6:30 a.m.–2:30 p.m. shift, that he made the statement about the union organizers watching their backs to Young around 1 p.m. that day, and that sometime before then, Young and Lawley took their break together, at which time Lawley told him it was going to be his last day at work. It seems rather odd that a supervisor, who allegedly was told to go home at around 10 a.m., if he was told, would take a break, and hang around another 3 hours, talking to employees, in the presence of the same manager (Bobby Trest) who was told to send him home at least 3 hours earlier. I therefore find that the Respondent has failed to show that the employment relationship had ceased to exist at the time the statement was made. Rather, the evidence shows that Supervisor Lawley was on the Employer's premises and that the statement was made during his normal working hours in and/or around a working area. Therefore it is not hearsay and it is admissible.

The Respondent nevertheless argues that Young should not be believed because he subsequently was terminated in February 1997, for allegedly falsifying documents. Young denied any wrong doing at the hearing and testified that he had retained an attorney to represent him in a proceeding involving his termination. In light of the contested allegations surrounding the true reason for his termination, I am not inclined to attach any significance to this evidence for purposes of impeaching his veracity. I do find, based on my observation of the witness, that Young was a credible witness and that therefore the comments

he attributed to Lawley further show that the Respondent, by and through Easton, opposed the Union.

Employee Israel Williams also testified about a conversation he had with Easton shortly after the 14 warehouse employees were discharged. He recalled coming out the bathroom by the main office day and encountering Easton in the hall. Since it was just the two of them, he asked Easton for the real reason the 14 employees were discharged. According to Williams, Easton told him that they were discharged because of their union activity, which was causing a commotion in the warehouse. Easton also said that the employees involved with the 1996 organizing campaign eventually would be let go too. Easton denied ever having such a conversation with Williams and further denied that the 14 employees were discharged because of their union activities. The Respondent points out that in an earlier group meeting, Williams asked Easton whether the 14 employees were let go because an election was coming up to which Easton responded that the question did not make any sense because he only knew of 2 individuals, out of the 14, who were union organizers. At that point, Williams and other employee expressed disbelief with Easton's response, and intimated that he knew more than he was admitting to. The Respondent nevertheless argues that it is highly unlikely that Easton would answer the question one way in front of a group of employees, and then answer it another way in private conversation with Williams.

Despite the Respondent's assertions to the contrary, it is plausible that Easton would tell Williams something different, in a one-to-one conversation with no one else around, than what he told a group, especially if he wanted to deter Williams from voting for the Union in the upcoming election. On the other hand, it is implausible that he would admit in public to violating the Act, while antiunion campaign was underway. What adds credence to Williams' testimony is that the comments attributed to Easton are consistent with other similar statements attributed to him via Supervisors Sealy and Lawley, and are also consistent with Easton's repeated assertions that he did not need or want a union in the warehouse. I find that Williams was a credible witness, with adequate recall, and I therefore credit his testimony.

Employee Harvey Dickerson, who was a visible union supporter, also testified about a private encounter that he had with Easton sometime during "the week before" the December 20, 1996 union election. According to Dickerson, he was summoned by Supervisor Calvin Sealy to a small office in the sanitation department about 7:30 p.m. one evening for a one-on-one meeting with Easton. After complimenting Dickerson on his leadership abilities and educational background, Easton purportedly asked Dickerson to think about joining his management team. According to Dickerson, Easton said that unions were bad business and cost people their jobs. He added that the Respondent would not tolerate a union in the warehouse and if a union were elected, the Respondent would opt to move the facility out of Louisiana. Supervisor Calvin Sealy testified that he had no recollection of escorting anyone who he did not supervise (which presumably included Dickerson) to a meeting with Easton. He also said that he did not escort Dickerson to a meeting with Easton on December 11, and that he was not at work past 6 p.m. on December 11 or 12, 1996, which was approximately 1 week before the union election. Easton denied ever meeting privately with Dickerson or discussing with him the possibility of becoming a supervisor or telling him that he knew that the 14 who were fired were on the union side.

Although not free from doubt, the greater weight of the evidence, and particularly Sealy's testimony, supports Easton's denial that the incident did not occur. I therefore credit Easton's testimony.

In addition to the evidence of animus already discussed, the record reflects that soon after the 1995 union campaign began, the Respondent promulgated a no-solicitation rule, which resulted in the posting of a yellow sign outside the entrance of the warehouse driveway, prohibiting any solicitation on the Respondent's property, as well as the posting of signs on the employee bulletin boards inside the building stating that any materials left in the breakroom would be confiscated. The undisputed evidence discloses that prior to the 1995 organizing drive, there was no restriction placed on soliciting at the warehouse, and even after the no-solicitation rule went into effect in 1995, employees were nevertheless allowed to sell raffle tickets or chances.

The uncontradicted evidence also shows that Watts and other supervisors were observed removing union leaflets from employee breakroom and bulletin boards, and that Supervisor Mike Lawley refused to allow employee Kelly Kennedy to place union material on an employee bulletin board.

With respect to Watts, Aranyosi and Young both testified that he told them that it was his job to take down the materials and that La Trace had said if the Union was elected he would close or move the warehouse. The Respondent called Watts as a witness for the sole purpose of denying that he said, or La Trace said, that he would close the warehouse. He was not asked by Respondent's counsel, and therefore did not say, whether La Trace told him he would move the warehouse if the Union was elected. He was not asked and therefore did not deny taking down the union literature or having a conversation with either Aranyosi or Young about his actions.

The selective and very limited testimony of Watts leaves uncontradicted the testimony that La Trace said he would "move" the facility if the Union was elected. Aranyosi and Young both were credible witnesses and I credit their testimonies. The Respondent's no solicitation policy and Watts' remarks are further evidence of union animus.

Based on all of the foregoing, I therefore find that the General Counsel has satisfied his initial evidentiary burden. The Respondent must now show that legitimate business reasons existed for its decisions, and that it would have made the same decision even in the absence of union activity.

b. The Respondent's defenses

(1) The ice plant

The Respondent argues that it closed the ice plant because it was less costly to purchase ice from an outside vendor than to produce ice in the warehouse. La Trace testified that the first time he toured the ice plant in June 1995, he thought that it was too small to adequately supply ice to the Respondent's 118 stores. La Trace said that although the Respondent produced and stored ice at a leased storage facility in Mobile, Alabama, in anticipation of peak periods (i.e., summer months) and the hurricane season, demand invariably outstripped supply, forcing the Respondent to purchase ice from outside vendors. La Trace testified that the transporting and storing of ice resulted in significant additional expenses associated with the production of ice.

La Trace testified that although he repeatedly asked Easton to obtain competitive bids from outside vendors for ice, his requests were ignored. Eventually he directed Thomas Robbins, senior vice president marketing, to solicit competitive bids from outside vendors for purchasing ice. In late September 1996, pursuant to Robbins' instructions, the merchandising department obtained a bid from Sciana Ice Company, a vendor, which could provide the Respondent with ice at a cost of 18.8 cents per bag versus 23.5 cents per bag if produced in the ice plant. According to a written report, dated September 30, 1996, the Respondent could save $150,000 per year by buying ice from an outside vendor. La Trace testified that after discussing the report with Robbins, he informed Easton that he was closing the ice plant.

While the evidence establishes that there was a cost savings associated with purchasing ice from an outside vendor, the Respondent has not shown with reasonable certainty the amount of the cost savings. According to the September 30 report, which La Trace discussed with Robbins, the annual savings amounted to $150,000. However, the evidence reflects that the 18.8-cent-per-bag quote did not include the cost of the Delchamps plastic bag, which according to Robbins was .0365 cents, or the cost of warehousing the ice in Hammonds and delivering it from there to its stores. When these costs are added, the actual cost of purchasing ice is 22.02 cents per bag of ice, and not 18.8 cents per bag. The actual savings per bag therefore is .013, rather than .047 cents per bag, which made the annual projected savings $41,600, rather than $150,000. Although La Trace testified that he was unsure whether the 18.8 cents per bag quote included the cost of the bag, the evidence shows that Robbins was aware of this and other added individual costs per bag, when he went over the report with La Trace. The evidence therefore supports a reasonable inference that the same information was available and/or provided to La Trace, when he discussed the matter with Robbins, before he informed Easton that he was closing the ice plant. That being the case, the evidence also supports a reasonable inference that La Trace knew and/or had reason to know that the projected annual savings of $150,000 on its face was overstated.

According to La Trace and Robbins, the September 30 report is inaccurate in another respect. Both testified that the cost of producing ice in the warehouse was actually greater than 23.5 cents per bag. La Trace testified that there were additional "dramatic costs" associated with producing ice such as, the cost of storing the ice at Christian Salverson Storage in Mobile, Alabama, the costs associated with fuel and transporting the ice from Hammond to Mobile and back to Hammond, and the cost of purchasing additional ice from outside vendors during peak and emergency periods. Neither La Trace or Robbins knew the actual costs of these items, but Robbins was sure he had seen some figures at some point in time.

Adding further to the confusion is the fact that not all ice produced in the warehouse was transported to and stored in Mobile. Therefore, not every bag of produced ice had added-on costs. But because there is no evidence showing how many bags of produced ice were transported and stored in Mobile in a year, there is no way to determine from the evidence the total extra costs, even if there was specific evidence explaining each of the extra costs. In addition, La Trace testified on cross-examination that some of the ice transported back to Hammond for distribution was carried by empty trucks returning to the warehouse after delivering other products to the stores, which at best would have resulted in a shared expense with some other department.

Robbins' testimony did little to clarify the issue. He testified that prior to October 1996, the Respondent was charging its stores 30 cents a bag for ice, even though it cost only 23.5 cents per bag to produce, Robbins attributed the difference to the transpiration and storage costs associated with transporting the ice back and forth from Mobile. But he did not know what those individual costs were and his testimony regarding the 30-cent figure was uncorroborated.

In addition, the evidence does not show, exactly when prior to October 1996, the Respondent was charging its stores 30 cents a bag. This is significant because the evidence shows that the cost per bag of produced ice greatly fluctuated from month-to-month. For example, at the end of June 1996, the cost of ice produced was only 14.4 cents per bag, which means that the delivered price per bag during that month would have been significantly less than 30 cents.

Thus, with respect to determining the amount of cost savings in closing the ice plant, the Respondent's evidence raises more questions than it answers. La Trace's testimony about "dramatic" added costs is generalized and uncorroborated, and Robbins' uncorroborated testimony about 30 cents per bag effectively is hearsay, which while admitted into the record without objection, has little or no probative value in determining how much more than 23.4 cents per bag it cost to deliver produced ice to a store.

In sum, while the evidence reflects that there was a cost savings associated with closing the ice plant, the Respondent has not shown with any reasonable certainty the amount of the cost savings. While that does not necessarily mean that the decision to outsource was not legitimate, it does raise some serious doubts about whether the same decision would have been made in the absence of union and/or concerted activity.

(2) The maintenance mechanics

The evidence reflects that cost savings were less of a factor in the decision to outsource the electrical, conveyor, and refrigeration maintenance functions. Easton vacillated at first by stating that "cost was the primary factor driving the decision to outsouce," but quickly changed his testimony by saying that it was motivated by the need to get higher quality service. La Trace essentially conceded that some of the outsource contracts did not result in any savings. For example, the evidence reflects that there was little or no cost savings associated with the outsourcing of the electrical maintenance function.

The credible evidence also reflects very little cost savings associated with outsourcing the refrigeration maintenance function. Easton testified that in addition to saving the yearly wages of 1-1/2 refrigeration maintenance men, which he calculated using their W-2 forms, there was an additional savings of approximately 25 percent of their annual wages attributable to benefits. His calculations are reflected in Respondent's Exhibit R-9. However, Easton testified that he did not know what the 25-percent benefits savings was based on because he got the information over the telephone from Human Resources Vice President Trebesh. No evidence was submitted to corroborate the estimate. The Respondent sought to introduce a summary comparison of the costs between contracting out and keeping the functions in-house (R. Exh. R-12), but it was not allowed into evidence. Neither Easton (nor the Respondent's counsel) could properly authenticate the document. No one knew for sure who had prepared it, although the Respondent's counsel

thought that another law firm had prepared the document in response to the unfair labor practice charge. No attempt was made to introduce any underlying documentation for the summary. Nor did the Respondent attempt to introduce the W-2 forms[10] to verify that the wage calculation was correct. The General Counsel also pointed out that although the summary fell within the scope of his subpoena request, it had not been provided. For all of the these reasons, Respondent's Exhibit R-12 was not admitted into the record.[11] Easton's testimony that there was a 25-percent benefits savings, therefore, is unsubstantiated hearsay, which standing alone has little probative value.[12] Based on wages alone, the evidence discloses a negligible cost savings in contracting out the refrigeration function.

With respect to the conveyor maintenance function, La Trace's testimony considered in tandem with a careful reading of the contractor's contract (C.P. Exh. 3) supports a reasonable inference that there likewise was no cost savings associated with the outsourcing of the conveyor maintenance function.

Instead, the Respondent primarily argues that the electrical, conveyor belt, and refrigeration maintenance services were "outsourced" in order to provide better service through more qualified personnel. In support of the Respondent's position, La Trace and Easton testified that the Respondent, for example, did not have a certified electrician. Easton said stated that after a power outage in late June 1996, he sought a competitive bid for electrical maintenance because the Respondent's electrician, Eugene Bardwell, was incapable of repairing the problem or maintaining the electrical switch. Even though the type of repair and maintenance involved only required about 10–15 percent of Bardwell's time, the evidence shows, and I find, that the impact of the electrical outage on the Respondent's business potentially was significant, thereby justifying the decision for outsourcing.

With respect to the refrigeration maintenance function, La Trace testified that the outsourcing was prompted by continuous ammonia leaks that endangered the work force. But the evidence does not establish that there actually were ammonia leaks, or if there were, that they presented any health concerns. Rather, the evidence shows that the ammonia alarms frequently sounded, but no one could determine why. Refrigeration mechanic Tippett opined that the fumes from the forklifts may have contributed to the alarms going off, but there is no evidence to support that theory. As far as safety is concerned, an OSHA citation was issued because, among other things, the employees failed to "heed" the ammonia alarms by evacuating the building. The evidence (C.P. Exh. 1) establishes, however, that the violation was abated at the time of the OSHA inspection (7/22/96–8/16/96), which supports a reasonable inference that the ammonia leaks/alarms no longer posed a potential danger to employees, after mid-August 1996. Thus, La Trace's testimony that the ammonia leaks endangered the work force is not accurate, is unsubstantiated, and is suspicious.

The Respondent nevertheless implies that the frequent alarms were result of Tippett's inability to detect and correct the problem, and therefore he was not up to the job. But the evidence shows that the Respondent had planned to install a new ammonia alert system, which supports a reasonable inference that the problem lie with the equipment and not with Tippett. To be sure, neither Easton nor La Trace cited any other particular problems with Tippett's work and according to Tippett's uncontracted testimony, there was none. Nor does the Respondent explain how an employee, like Tippett, could be name "Employee of the Month," in July 1996, and be terminated in October 1996, because he was not providing quality service.

In the absence of any other evidence reflecting a problem with Tippett's ability to satisfactorily perform the refrigeration maintenance work, I find that the articulated reason for outsourcing the refrigeration maintenance position is pretextual.

As to the conveyor belt maintenance function, Easton testified that his decision was prompted by the continuous breakdown of the conveyor belt system, which he opined could have been avoided with proper preventive maintenance. He also pointed to the inability of the conveyor mechanics to install new reflector mirrors on the system, which required shutting down the system for several hours in order to detect and correct the problem. Thus, the evidence on its face establishes that there was a legitimate reason for outsourcing the conveyor belt function.

The evidence, however, is not free from doubt. What is troubling about the decision to outsource the maintenance functions (all three) is the fact that never once did the immediate supervisor, Myron Hall, tell or even suggest to Easton that the mechanics performing these functions were not qualified to do so. Whenever a problem was brought to his attention, he responded that he would take care of it. And despite Easton's testimony that the service being provided was not satisfactory, there is no evidence that Hall or any of the maintenance mechanics were disciplined, counseled, or even sent for training during their employment tenure with Respondent. The fact that the Respondent did nothing, short of eliminating these functions, to correct the quality of service raises some questions about the decisions themselves. I nevertheless find that the Respondent had a legitimate reason for outsourcing the electrical and conveyor functions.

But even if the Respondent had established a legitimate business reason for closing the ice plant and outsourcing all three maintenance functions (electrical, refrigeration, and conveyor), the evidence taken as whole does not support the conclusion that the same decisions would have been made in the absence of protected concerted activity. First, the timing of decisions and the implementation of them is highly suspect. On September 19, 1996, the Regional Director approved the settlement of several pending unfair labor practice charges; on September 22, 1996, the 1-year election bar expired; and on or about September 30, 1996, La Trace notified Easton that he was going to shut down the ice plant. Almost simultaneously,

[10] In his brief, p. 42, fn. 3, the General Counsel inaccurately states that the W-2 forms were rejected. Those forms were never identified and offered into evidence. In addition, I am denying the General Counsel's request that I should find that the wages of the maintenance employees were higher than the cost of the contractors, for the reason that the Respondent did not produce certain tax forms. That issue was not raised at the hearing and it is unclear which tax forms the General Counsel is referring to.

[11] I see no reason to change my ruling, nor do I see any reason to grant the General Counsel's renewed motion to strike all of Easton's testimony concerning costs simply because the Respondent did not provide the summary in response to his subpoena.

[12] R. Exh. R-9 also contains a handwritten notation that there would be an additional $25,000 in savings during the first year of the contractor contract for installation of a new ammonia alert system, but no such provision is contained in the contractor's proposal (C.P. Exh. 5). I therefore attach no significance and give no weight to this uncorroborated reference to a $25,000 savings.

Easton told La Trace that he had been thinking about outsourcing the electrical, refrigeration and conveyor maintenance functions, so they might as well do both at once. A few days later, on or about October 4, 1996, 14 employees (including the principal union activists and union supporters) were discharged. The evidence shows that in less than 2 weeks after the election bar expired and the unfair labor practice charges were settled, the Respondent eliminated four warehouse functions, and along with that, the two principal union protagonists and a number of union supporters. When viewed in isolation, the articulated reasons for the Respondent's action appear to be legitimate. When viewed in the context of what was going on at the same time, the reasons for the actions are less persuasive. Where, as here, the circumstances surrounding the discharge of several union supporters seems otherwise innocent, significant weight may be given to the timing of the decision and its implementation. *Merchants Truck Line, Inc. v. NLRB,* 577 F.2d 1011, 1016 (5th Cir. 1978).

To put the matter into perspective, the evidence shows that the Respondent had the information and opportunity to undertake the same action long before the election bar was due to expire. La Trace testified that the first time he toured the ice plant in June 1995, it occurred to him that the ice plant was too small for a company the size of the Respondent. From the outset he questioned whether the ice plant was economically justifiable, told Easton to consider obtaining competitive bids for ice production, and continued to push Easton to justify its existence. Why then did La Trace, who was generally intent on reducing costs, tolerate Easton's "recalcitrance" for more than a year without taking action against Easton or action to obtain a competitive bid sooner. There is nothing in the record which shows that La Trace could not have taken the same action in July, August, or even September 1995, that he took in the fall of 1996.[13] Rather, he waited until September 1996, as the expiration date of the election bar drew closer, to close the ice plant.

Easton similarly had the information and opportunity to outsource the conveyor and refrigeration function almost 1 year earlier. The evidence shows that in November 1995, he obtained had the same quote from Engineered Refrigeration Systems, Inc. (ERS) for outsourcing the refrigeration work and the same quote from Southern Material Handling Specialist for outsourcing the conveyor belt maintenance work. While Easton said that he broached the subject with La Trace by memo and phone in November 1996, the evidence shows that he waited 10 months before taking any definitive action on the same information.

In an effort to explain the delay, Easton said that he decided to revisit the outsourcing issue after a power outage in late June 1996. But he also testified on cross-examination that the same power outage problem occurred almost 1 year earlier in August 1995, and at that time he knew that Bardwell, the electrician, was not capable of correcting the problem. But instead of obtaining a quote for outsourcing the electrical function in September, October, or November 1995, which is when he obtained the refrigeration and conveyor quotes, he did nothing, until September 1996, right before the election bar was about to expire.

The sum total of the evidence therefore discloses that the Respondent had the same information and opportunity to undertake the same actions long before September 1996.

Nor does the evidence show that the Respondent was compelled for economic reasons to close the ice plant or outsource the maintenance functions when it did. There is no evidence that the ice plant was not making a profit. Rather, the evidence shows that Easton thought the ice plant was a profitable component of the warehouse, and that he had obtained an estimate in May 1996, to expand production to make increase profitability.[14] Nor is there any evidence that other exigent economic circumstances warranted outsourcing the maintenance functions at the exact same time.

In addition to the timing of the action, the conflicting testimonies of La Trace and Easton further draws into question whether the same decisions would have been made, when they were made, in the absence of union activity. In explaining the rationale for closing the ice plant, La Trace said that he challenged Easton to justify the economic existence of the ice plant and as time progressed he pursued the issue harder and harder with Easton. He finally told Easton that he was taking it upon himself to get a competitive bid for obtaining ice from a vendor. But Easton denied he was instructed to reduce costs by closing the ice plant. On cross-examination he testified as follows:

> Q. During that time when he made that first statement to you about reducing costs, did Mr. La Trace indicate to you that the thought that a way to reduce costs would be to close the air (sic) plant?
>
> A. No, he did not.
>
> Q. Do you recall, sir, subsequent to that initial discussion with Mr. La Trace, him ever instructing you to start looking into closing the ice plant?
>
> A. No.
>
> Q. Do you recall him ever giving you any instructions to close the ice plant other than the ones he gave you in September of 1996?
>
> A. No.
>
> Q. Do you recall Mr. La Trace ever ever telling you that you should try to find other vendors for the ice plant?
>
> A. No.
>
> Q. Do you recall Mr. La Trace ever ordering you to take action to look at the cost involved in the ice plant manufacturing facility?
>
> A. No. [Tr. 1243.]

Easton went as far as to testify that La Trace never gave him any specific instructions about cutting costs related to the ice plant prior to September 30, 1996.

While La Trace opined that Easton was "recalcitrant" and "dragging his feet," the overall vidence shows that Easton dutifully attempted to carry out La Trace's general instructions to cut costs in the warehouse by obtaining bids to outsource the refrigeration and conveyor maintenance functions in November 1995, by sending them to La Trace in a timely manner, by discussing them with him over the phone, and by following up with a reminder memo, and then waiting for further instructions which never came. If anything, the evidence shows that it was

[13] To the contrary, the evidence discloses that the Respondent was continuously seeking competitive bids with all of its products in an effort to lower costs. It therefore would have been almost effortless for La Trace or Easton to obtain a competitive bid for ice in the normal course of business long before September 1996.

[14] The evidence reflects that even after La Trace decided to close the ice plant, Easton contacted ERS to determine if the May 1996 estimate was still valid.

Easton pressing La Trace to take action to reduce costs, rather than the other way around.

Perhaps the most troubling aspect of the Respondent's evidence is La Trace's reluctance to acknowledge that he knew Aranyosi, and his outright denial that he knew of anyone in the ice plant who supported the Union, prior to closing that facility. On direct examination, La Trace was asked:

> Q. Prior to making the decision to close the ice plant, did you know that any employee or employees in the ice plant had engaged in union activities?
>
> A. Not to my knowledge.
>
> Q. Prior to making the decision to close the ice plant, did you know an employee by the name of David Aranyosi?
>
> A. I believe I had heard that name a couple of times previous to this period of time. [Tr. 1077.]

On cross-examination, La Trace testified that he was aware of Aranyosi almost a year before when there was some union activity in the warehouse, that he may have heard that Aranyosi was on the union organizing committee, that he knew Aranyosi was a union observer during the 1995 election, that he knew Aranyosi was offered a job in the reclaim center, that he may have heard his name mentioned in connection with the unfair labor practice charges, and that he met Aranyosi twice and spoke with him on the phone once. La Trace's refusal to admit the extent of his knowledge of union activity in the ice plant, as well as the extent of his familiarity with Aranyosi and his union activity, raises serious credibility issues and supports a reasonable inference that he was trying to conceal his true motive for closing the ice plant, because his true motive was unlawful. *Fluor Daniel, Inc.,* 304 NLRB 970 (1991).

In light of the timing of the Respondent's decisions, the fact that the same information and opportunity to act was available long before September 1996, the fact that there was no reason compelling the Respondent to implement its decision when it did, and the fact that the Respondent adamantly opposed the Union, I find that even where the decisions to outsource a function are legitimate on their face, the same decisions would not have been made in the absence of union activity. I therefore find that the Respondent violated Section 8(a)(3) of the Act by discharging David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph Lamote, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald.

2. The presettlement 8(a)(3) violations

(a) Ivy Tate discharge

Paragraph 21 of the complaint alleges that employee Ivy Tate was discharged on December 14, 1995, because of his union activity in violation of Section 8(a)(3) of the Act. At page 35 of its brief, the Respondent essentially concedes, and I find, that the General Counsel has satisfied his initial evidentiary burden under the *Wright Line* standard. The Respondent argues, however, and I agree, that the greater weight of the evidence shows that Ivy Tate was discharged for nondiscriminatory reasons.

No one disputes that Ivy Tate was called to the office of Supervisor Daniel Howell in December 1995, to receive a warning for excessive absenteeism or that the warning was unwarranted. The issue is whether Ivy Tate legitimately refused to sign the warning and whether his refusal to do so, standing alone, resulted in his discharge. Tate testified that he refused to sign the warning, when he met with Howell and leadman Leroy Davis, and in another separate meeting with Howell, because of a large blank space in the middle of the form. He said that he offered to sign the document if he could place an "X" in the space, and if he could have a copy, but Howell would not permit it. Tate further testified that when he met with Howell, Battle, and Easton, he was shown a different form, which was complete, and which he agreed to sign, after explaining why he declined to sign the original form.

Howell and Davis denied that Ivy Tate asked to place an "X" on the original form, which Howell identified as Respondent's Exhibit R-21. No large blank spaces appear on that form. Howell stated that after Ivy Tate left, he reviewed his records, added the dates (which amounted to one more than he initially thought), and then again asked Ivy Tate to sign the form, but he still refused. Howell rewrote the warning to add the additional date and make it look neat (R. Exh. R-5), and turned the matter over to Battle, who arranged a meeting with Easton, Howell, Battle, and Ivy Tate.

The evidence shows that the updated form, Respondent's Exhibit R-5, is substantially similar to Respondent's Exhibit R-21. Howell, Battle, and Easton all testified that during their meeting with Ivy Tate he did not offer to sign the form, which places Ivy Tate's credibility in question.

The evidence shows that the Respondent has a policy of requiring employees to sign disciplinary reports, and that at least one other employee was terminated prior to Ivy Tate for refusing to do so. The Respondent's actions were consistent with its policy and practice. I therefore find that Ivy Tate was discharged for nondiscriminatory reasons and I shall recommend that the allegations contained in paragraph 21 of the complaint be dismissed.

(b) Kevin Coston suspension

Paragraph 19 of the complaint alleges that employee Kevin Coston was suspended for 5 hours on July 5, 1995, because of his union activity in violation of Section 8(a)(3) of the Act. The evidence shows that Coston was a visible member of the union organizing committee in June 1995, who wore a union button, and handed out union leaflets inside and outside of the warehouse. More than once he distributed union literature in the breakroom in presence of his immediate supervisor, Tony Martin. His union support was therefore known to the Respondent's management official, who implemented the disciplinary action taken against him.

The evidence also shows that on July 4, 1995, Coston returned to work during off-duty hours to retrieve a cap with a union pin. He parked in a restricted parking area, and upon leaving was stopped and questioned by David Battle, who was filling-in as receiving supervisor that evening. The following morning, he was called to work by his supervisor, questioned about being at the warehouse the night before, and sent home. A few hours later, he was called back to work for a meeting with Easton, who told him that if he ever returned to the warehouse during nonworking hours without permission, or if he ever parked in a restricted area again, he would be fired. Coston estimated that he lost 5 overtime hours as a result the Respondent's action. While the evidence is not overwhelming, I nevertheless find that the General Counsel has minimally satisfied his initial evidentiary burden.

The countervailing evidence shows, and no one disputes, that Coston returned to work during nonworking hours, without permission, parked in a restricted parking area, and entered the warehouse. The countervailing evidence also shows, and no one disputes, that the Respondent had a policy of prohibiting employees from returning to work during nonworking hours without permission. Coston however testified that he was not aware of the Respondent's policy. And in an attempt to show that he had been treated differently because of union activity, he said that he had seen other employees return to the warehouse during nonworking hours (primarily to pick up their paychecks). Coston conceded, however, that prior to July 4, he had overheard some supervisors in another department talking about the Respondent prohibiting employees from returning to work to pick up their paychecks, because too many were doing so. Contrary to his assertions, the evidence therefore supports a reasonable inference that he was aware of the prohibition on returning to work during nonworking hours without permission. He had also seen other employees park in the restricted area, but there is no evidence that the Respondent knew of these incidents and/or failed to take action. To the contrary, Battle said that he had no knowledge of any such violations.

Thus, the evidence shows that Coston was in effect verbally warned for nondiscriminatory reasons. I therefore shall recommend that the allegations of paragraph 19 of the complaint be dismissed.

(c) The restrictions on Aranyosi's movement

Paragraph 20 of the complaint alleges that on September 5, 1995, the Respondent unlawfully restricted David Aranyosi's movement within the warehouse in violation of Section 8(a)(3) of the Act. The undisputed evidence shows that during his breaks Aranyosi distributed union literature in nonworking areas of the warehouse. While doing so, he was told by Supervisor James Athens that he would have to take his breaks in either of two designated areas close to the ice plant. When Aranyosi complained that he was being restricted because of his union activity, Easton intervened, told Aranyosi that he would be cited for insubordination if he went outside the designated break areas, but reversed his decision when Aranyosi told him that he had already contacted the NLRB Regional Office. The evidence supports a reasonable inference that the Respondent sought to limit Aranyosi's union activity throughout the plant during nonworking time in nonworking areas by restricting his access to those areas. I find that by discriminating against him with respect to terms and conditions of employment because of his union activity, the Respondent violated Section 8(a)(3) of the Act.

(d) Aranyosi's verbal warning

Paragraphs 14 and 15 of the complaint allege that after organizing a series of employee meetings during breaks on December 5, 6, and 7, 1995, to discuss pay and working conditions, and after insisting that Easton meet with the employees to discuss these matters, Aranyosi was issued a verbal warning on December 8, 1995, for failing to bend his knees while lifting ice bags, failing to honk the forklift horn before proceeding into the corridor, and leaving personal items in the work area.[15] The Respondent does not dispute that Aranyosi engaged in the above-described protected concerted activity or that he was given a warning (i.e., a written report of conference). Rather, it argues that Aranyosi violated general safety rules, which were posted, about honking horns and bending knees when lifting objects in the warehouse. It also argues that he and other employees were told by Supervisor Watts about 3 weeks before the incident to bend their knees while lifting. Watts did not testify about the circumstances surrounding the warning and Aranyosi denied receiving any instructions from him about bending his knees prior to December 8. The failure of Watts to testify about this matter warrants an adverse inference that his testimony would not have supported the Respondent's assertions that he instructed Aranyosi to bend his knees. *Woodlands Health Center,* 325 NLRB 351 (1998).

The countervailing evidence therefore barely establishes that the Respondent had legitimate reasons for disciplining Aranyosi. Even so, the real issue is whether it would have undertaken disciplinary action in the absence of Aranyosi's union and protected concerted activities. To properly answer the question, the disciplinary action cannot be viewed in isolation. In this regard, the evidence shows that the events that occurred on December 5, 6, and 7, where the culmination of a series of events, which singularly focused attention on Aranyosi's union support. Only a few weeks before the warning was issued, Aranyosi told Easton he was not interested in becoming a supervisor, and in the same conversation he told him that he had contacted the UFCW about organizing the warehouse employees. A few days later, Aranyosi phoned the Respondent's President, La Trace, to tell him that so long as Easton was managing the warehouse, he was going to try to unionize the facility. He repeated that comment to Battle the following week, and about the same time sought to broker a settlement agreement involving all of the pending unfair labor practice charges with Easton. This all took place within approximately 3–4 week period before the warning. The evidence shows a crescendo of protected concerted activity, which reached a peak on December 5, 6, and 7, when Aranyosi, single handedly, got the employees together during their breaks to talk about pay, "combo runs," and other terms and conditions of employment.

While there is no dispute that Aranyosi did not bend his knees when lifting the ice bags or honk his horn when proceeding into the corridor, the evidence supports a reasonable inference that the respondent chose to enforce the rules on the day immediately after Battle met with the employees in order to discourage Aranyosi's increasing protected concerted activity. I therefore find that the disciplinary action would not have been taken in the absence of Aranyosi's union activities, and that the Respondent violated Section 8(a)(3) of the Act by giving Aranyosi a verbal warning on December 8, 1995.

3. The 8(a)(1) violations

Four presettlement violations of Section 8(a)(1) are alleged in the complaint. Paragraph 7 alleges that Supervisor Watts told Aranyosi and Junior Young in June 1995, that if the Union was elected, the Respondent's president, La Trace, would close the warehouse. Paragraphs 8, 9, and 12 assert that shortly after Local 270 began organizing in June 1995, the Respondent posted a no-solicitation sign along the entrance to the warehouse; posted signs in the breakroom stating that anything left

[15] Aranyosi was one of three ice plant employees who received warnings for similar, but not exactly the same, infractions. Although he did not deny that he failed to bend his knees or honk the horn, he questioned whether it was possible to bend knees when lifting from waist level and he disclaimed any ownership or other interest in the reading materials that were found on a small table in the corner of the ice plant.

on tables after break would be confiscated; and that certain supervisors removed union literature from employee bulletin boards, while allowing nonunion literature to remain. A discussion of the evidence relating to each violation appears above in section B,1,a,(3) and therefore will not be repeated. My findings and the reasons are as follows.

(a) Wendall Watts' threat of closing the warehouse

I credit the testimony of Aranyosi and Young that Watts told them that La Trace had said that if the Union was elected he would close or move the warehouse. Their individual recollections of details was satisfactory, their independent testimonies were consistent, and they presented themselves as believable witnesses. Although Watts denied that he said, or that La Trace told him, that the warehouse would be closed, if the Union was elected, his testimony was very selective, and he did not deny that La Trace told him that he would "move" the warehouse. Moreover, when La Trace testified, he did not deny making either remark. The failure of La Trace to deny making the comments warrants an adverse inference that his testimony would not have corroborated Watt's testimony or supported the Respondent's position. *Woodlands Health Center,* supra. The greater weight of the credible evidence therefore establishes that Watts did threaten that the warehouse would be closed or moved if the Union was elected. I therefore find that the threat of closing and/or moving the warehouse violated Section 8(a)(1) of the Act.

(b) No-solicitation rule and removal of union literature

The Respondent presented very little, if any, evidence to dispute the allegations in paragraphs 8, 9, and 10, other than to have Battle testify that as of May 1997, the no-solicitation signs were not posted outside the warehouse. The Respondent instead argues that the testimonies of various unspecified witnesses should not be believed, because their testimonies are contradictory, generally exaggerated, and the product of faulty recollection. I do not agree. The evidence taken as a whole, which is largely undisputed, shows that after Local 270 began to organize, the Respondent posted no-solicitations signs at its entrance, warned employees not to leave materials in the breakroom, confiscated union literature left behind, and removed union literature from employee bulletin boards, while allowing nonunion literature to remain. The evidence also shows that while the no-solicitation rules were in effect, employees were allowed to sell tickets, candies for charities, and products for Amway, as they had done prior to the inception of the 1995 union organizing campaign. I therefore find that the Respondent conduct violated Section 8(a)(1) of the Act by promulgating and maintaining a no-solicitation policy.[16]

(c) La Trace's antiunion campaign threats

The undisputed evidence establishes that during his antiunion campaign meetings with the warehouse employees, La Trace stated that (1) he did not want or need a union in the warehouse, (2) that the Respondent could solve any problems that existed without outside help, and (3) if the Union was elected, the Respondent did not have to, and would not, bargain collectively. His remarks reflect more than a hard line in opposing the Union. They imply to the employees that it would be futile for them to elect a union. While not alleged in the complaint, I find that these remarks are closely related and sufficiently warrant a separate 8(a)(1) violation.

Although the evidence does not establish that La Trace specifically "threatened its employees with termination if they engaged in an economic strike," as alleged in paragraph 11, his comments about easily replacing the employees, in the context of telling them that he opposed the Union and in the context of stating that he would not bargain collectively, was an implicit threat that if there was a strike they would be replaced, and that they would not be brought back to work. I therefore find that these remarks by La Trace constituted an unlawful threat in violation of Section 8(a)(1) of the Act.

(d) Mike Lawley's alleged unspecified threat

For the reasons delineated in section B,1,a,(3), above, I credit Young's testimony that Lawley told him that all union organizers should watch their backs because Easton was going to get rid of them in 1 year. I also find that Lawley was a supervisor when he made the statement. But that does not necessarily establish that Lawley's parting comments to Young were a threat intended to interfere with any employee's statutory rights. The evidence supports a reasonable inference that Lawley was on good terms with the employees. Ledford testified that they were friends and Young testified that he took his break with Lawley on his last day at work. A few hours later, Lawley made it a point to call Young out of the building to tell him what he had overheard Easton say. It was not communicated in a threatening manner or in the close confines of a supervisor's office or in connection with anything that Young or had said or had done. Instead, the evidence reasonably shows that Lawley waited to communicate to Young some friendly advice, that is, "protect your back." I therefore shall recommend that the allegations of paragraph 13 of the complaint be dismissed.

4. The remaining postsettlement violations

(a) Rene Dexter's threatening remarks

The complaint alleges at paragraph 17, that in mid-December 1996, a few days before the 1996 union election, Associate Relations Manager Renee Dexter toured the warehouse telling the employees that if the Union was elected, the warehouse would close. The evidence shows that Dexter visited the warehouse in December 1996 as part of the Respondent's 1996 antiunion campaign. She was accompanied by Battle, who introduced her to DeIsrael Williams. He testified that Dexter asked him how the Company was doing and what he thought of the Union. She told him that if the Union was elected it would be costly to run the Company and that the Respondent may have to close the warehouse. She asked him to vote no union. His testimony on cross-examination was consistent and essentially unchanged.

Dexter had very limited recollection of the details of her conversation with Williams. Beyond asking him how he was doing and how he thought the Company was doing, she said she could not remember saying anything else to him. She also could not recall what he said to her. Even though she could not recall what they said to each other, she denied asking him his views about the Union and she denied telling him that if the Union was elected it would be costly to run the Company. She denied saying that the warehouse would shut down.

On cross-examination, she was reluctant to admit that she visited the warehouse as part of the Company's antiunion cam-

[16] The evidence does not show that the Respondent continued to post no-solicitation signs outside the warehouse after April 1996.

paign. She testified that Williams asked her about a pamphlet put out by the Respondent showing that in a similar type facility in Baton Rouge that went union, the employees were receiving wages lower than the Respondent's warehouse employees in similar jobs. But she denied saying anything about the Union or the union organizing drive. In short, Dexter's testimony was very guarded. Her recollection was not very good, and she did not present herself as a confident, believable witness.[17]

I therefore credit William's' testimony. I find that by the comments made by Renee Dexter on or about December 8, 1996, the Respondent violated Section 8(a)(1) of the Act.

(b) Easton's alleged comments to Dickerson

The facts surrounding the alleged December 16, 1996 meeting between Easton and employee Dickerson (complaint par. 18) are delineated in section B,1,a,(3), above. For the reasons stated there, I credit Easton's denial of the incident and therefore I shall recommend that these allegations in the complaint be dismissed.

5. Revocation of the informal settlement agreement, which was approved on September 19, 1996

I find that by terminating the 14 discriminatees on or about October 4, 1996, and by the threatening remarks made by Rene Dexter in mid-December 1996, a sufficient basis exists to vacate and set aside the informal settlement agreement.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) By threatening in late June 1995, that the Employer would close or move its warehouse if the Union was elected.

(b) By posting on or about July 1, 1995, no-solicitation signs along the driveway entering the Employer's property, and maintaining them through April 1996.

(c) By promulgating and maintaining a no-solicitation policy on or about July 1, 1995.

(d) By removing union literature from employee bulletin boards, while allowing nonunion literature to remain.

(e) By posting signs in the employee breakrooms, which indicate that any materials left behind will be confiscated.

(f) By implying to employees in August 1995, that electing the Union would be futile and threatening to replace employees permanently if they went out on strike.

(g) By threatening the employees in December 1996, by stating that it would be costly if the UFCW was elected and the Employer may have to close the warehouse.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by engaging in the following conduct:

(a) By discharging on or about October 4, 1996, ice plant employees David Aranyosi, Michael Ledford, and Gregory Clayton.

(b) By discharging on or about October 4, 1996, maintenance mechanics David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald.

(c) By restricting in September 1995, the movement of David Aranyosi from nonworking areas during nonworking times.

(d) By issuing a verbal warning to David Aranyosi on December 8, 1995.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. The aforesaid unfair labor practices delineated in 3(g) and 4(a) and (b), above, constitute a sufficient basis for vacating and setting aside the informal settlement agreement, which was approved on September 19, 1996.

7. The Respondent did not otherwise engage in any other unfair labor practices alleged in the complaint in violation of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily discharged David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald, I shall recommend that the Respondent be ordered to immediately offer them full reinstatement to their former positions or, if those positions no longer exist to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed; if necessary terminating the contracts of any vendors who were retained to perform the functions formerly performed by them and/or if hired in the interim, terminating the employment of services of any employees hired in their stead, and to make them whole for wage and benefit losses they may have suffered by virtue of the discrimination practiced against them computed on a quarterly basis as prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), less any interim earnings, with the amounts due and interest thereon computed in accordance with *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, Delchamps, Inc., Hammond, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to close and/or move its warehouse in Hammond, Louisiana, if employees aid, support, or join the Union or any other labor organization.

(b) Promulgate, maintain, or enforce any rules that prohibit employees from union solicitation in the warehouse during nonworking time or that prohibit employees from distributing union literature in nonworking areas during nonworking time.

[17] Battle gave a generalized account of Dexter's tour of the warehouse, pointing out that she had done so on more than one occasion. He did not recall ever hearing her say anything about the facility possibly closing. He also did not recall her talking to DeIsrael Williams.

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Restricting employees' access to areas of the warehouse to which they would have access during their nonworking time because of those employees' union activity.

(d) Implying to employees that it would be futile to elect the Union or any other labor organization and threatening to replace them if they aided, supported, or joined the Union or any other labor organization.

(e) Issuing verbal warnings to employees or discharging them because they aid, support, or join the Union or any other labor organization or because they engaged in protected concerted activity.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order offer David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald, immediate, unconditional, and full reinstatement to their former jobs or, if those jobs are no longer available, to a substantially equivalent one without prejudice to their seniority or any rights or privileges previously enjoyed.

(b) Within 14 days from the date of this Order, make David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of offer David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell, and Cody Fitzgerald, and the unlawful verbal warning issued to David Aranyosi and within 3 days thereafter notify them in writing that this has been done and that the discharges and verbal warning will not be used against them.

(d) Rescind the invalid no-solicitation/no-distribution policy prohibiting employees from union solicitation in the warehouse during nonworking time or which prohibit employees from distributing union literature in nonworking areas during nonworking time.

(e) Rescind the policy of removing union literature from employee bulletin boards so long employees are allowed to post other kinds of literature on the bulletin boards.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Hammond, Louisiana facility, copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 1995.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to close and/or move our warehouse in Hammond, Louisiana, if employees aid, support, or join the Union or any other labor organization.

WE WILL NOT promulgate, maintain, or enforce any rules that prohibit employees from union solicitation in the warehouse during nonworking time or that prohibit our employees from distributing union literature in nonworking areas during nonworking time.

WE WILL NOT restrict employees' access to areas of the warehouse to which they would have access during their nonworking time because of those employees' union activity.

WE WILL NOT imply to our employees that it would be futile to elect the Union or any other labor organization and threaten to replace employees if they aid, support, or join the Union or any other labor organization.

WE WILL NOT issue verbal warnings to employees or discharge them because they aid, support, or join the Union or any other labor organization or because they engaged in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, within 14 days from the date of this Order, offer David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell and Cody Fitzgerald, immediate, unconditional, and full reinstatement to their former jobs, or if those jobs are no longer available, to a substantially equivalent one without prejudice to their seniority or any rights or privileges previously enjoyed.

WE WILL make David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell and Cody Fitzgerald, whole for any loss of earnings, and any other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of offer David Aranyosi, Michael Ledford, Gregory Clayton, David Tippett, Marvin Jones, Ronald Richardson, Joseph LaMonte, Arthur Strahan, Joseph Hanson, Donald Lester, John Tate, Donald Lee, Eugene Bardwell and Cody Fitzgerald, and the unlawful verbal warning issued to David Aranyosi and within 3 days thereafter notify them in writing that this has been done and that the discharges and verbal warning will not be used against them.

WE WILL rescind the invalid no-solicitation/no-distribution rule prohibiting employees from union solicitation in the warehouse during nonworking time or which prohibit employees from distributing union literature in nonworking areas during nonworking time.

WE WILL rescind the policy of removing union literature from employee bulletin boards so long employees are allowed to post other kinds of literature on the bulletin boards.

DELCHAMPS, INC.